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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

B5

DATE: JUL 07 2011 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a lead senior researcher. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the beneficiary qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submitted a statement and additional evidence. The AAO withdrew the director's conclusions that the beneficiary does not work in an area of substantial intrinsic merit and that the proposed benefits of his work would not be national in scope. The AAO, however, concurred with the director that the request for a waiver of the alien employment certification process, based primarily on the claim that there is a shortage of available U.S. workers with the beneficiary's training and skills, is not warranted in the national interest. The AAO stressed that a shortage of workers with the alien's training and skills is exactly the situation the alien employment certification process was designed to address.

On motion, counsel submits the beneficiary's personal statement and a new reference letter. The beneficiary summarizes the basis of the motion as follows:

> As will be elaborated in subsequent paragraphs, it is the beneficiary's original contributions and intricate knowledge of the technology that makes him indispensible and unique, both qualifying him for the international recognition and making him far superior to colleagues, as he holds specialized expertise that has been **decisive in developing strategies for gene therapy-based clinical application not only for treating hemophilia A but also cancer.**

(Emphasis added.) The beneficiary goes on to assert that the AAO failed to give sufficient weight to the reference letters in the record. The beneficiary cites *Xiao Ji Chen v. U.S. Dep't. of Justice,* 434 F.3d 144, 163 (2nd Cir. 2006) for the proposition that the AAO must consider al of the evidence in the record that has probative value.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy.

The AAO accepts that the current motion constitutes a motion to reconsider. For the reasons discussed below, the AAO reaffirms its finding that the general assertions of outstanding ability, international recognition and influence in the field are not supported by the specifics in the letters or the remainder of the record. After the adjudication of the instant motion, the AAO will have reviewed the letters and other evidence on two occasions. Therefore, any subsequent motion that merely requests that the AAO review the evidence again will not meet the requirements for a motion, set forth above.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

As stated in the AAO's previous decision, the petitioner holds two Master's degrees, one in Environmental Biotechnology from [redacted] in India in 1999 and the other in Biology from [redacted] in Pennsylvania in 2002. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The only issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, it must be shown that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

In the AAO's previous decision, the AAO noted that the beneficiary works as a "lead senior researcher." The AAO noted that [redacted] at the petitioning institution, explains that in this position, the beneficiary oversees "other technicians." The AAO further noted that [redacted] described the beneficiary's duties, which include developing assays, transplanting bone marrow in laboratory animals and caring for the animals. Thus, the AAO concluded that the beneficiary is essentially a laboratory technician. On appeal, counsel challenges this conclusion, noting that [redacted] characterizes the petitioner as an "outstanding researcher." [redacted] letter in which he so characterizes the beneficiary is requesting classification pursuant to section 203(b)(1)(B) of the Act as an outstanding professor or researcher.[1] Thus, he used the phrase "outstanding researcher" in that context. On motion, [redacted] only characterizes the petitioner as a "scientist." Regardless, however [redacted] characterizes the beneficiary, it remains that the duties he lists are consistent with a laboratory technician.

[1] The petitioner has filed two petitions in behalf of the beneficiary, the one at issue in this decision and a second petition seeking classification pursuant to section 203(b)(1)(B) of the Act.

As stated in the AAO's previous decision, the laboratory in which the beneficiary works is dedicated to developing gene therapy for hemophilia A. The AAO concluded that this work has substantial intrinsic merit. The AAO next concluded that it is readily apparent that gene therapy for hemophilia A, a disease that affects one in 5,000 males worldwide, would be national in scope.[2] As noted in the AAO's previous decision, however, the petitioner cannot establish the beneficiary's eligibility for a waiver of the alien employment certification process based on the importance of the area of employment alone. Rather, it is necessary, to determine whether the beneficiary will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The AAO stresses once again that the modifier "minimum" does not nullify the word "qualifications" or suggest an unskilled worker. In other words, an available U.S. worker with the requisite "minimum qualifications" for the job is one who, by definition, is qualified for the job. The "minimum qualifications" for a given job may, in fact, be quite stringent.

Ultimately, eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this beneficiary's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification sought. By seeking an extra benefit, the petitioner assumes an extra burden of proof. The petitioner must demonstrate the beneficiary's past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The beneficiary does not challenge the AAO's conclusion that the article in the [redacted], a local newspaper, stating that the beneficiary's research team won a [redacted] award from an unidentified entity and naming several of the team's researchers but not the beneficiary, has little evidentiary value. The AAO reiterates that the article postdates the filing of the petition and, thus, cannot establish the beneficiary's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

The petitioner submitted evidence that the beneficiary is a member of the [redacted] and the [redacted]. Counsel also

[2] [redacted] provides these statistics in his letter in support of the petition.

previously referenced the American Society of Hematology (ASH). The petitioner, however, did not document the beneficiary's membership in that society. On motion, the beneficiary does not address ASH. Rather, the beneficiary asserts that both ASGT and ESGCT "require outstanding achievements of their members." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). The record does not contain the bylaws or constitutions of ASGT or ESGCT establishing their membership criteria.

Professional memberships are one type of evidence that a petitioner may submit to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on professional memberships, while relevant, are not dispositive to the matter at hand. *Id.* at 222. The record contains no evidence that either ASGT or ESGCT membership is indicative of an influence in the field as a whole rather than simply employment in that field and an adherence to ethical standards.

The AAO acknowledged that, as of the date of filing, the beneficiary had coauthored six articles. The AAO concluded, however, that while the publication of articles may demonstrate national exposure, it cannot, by itself, demonstrate the beneficiary's impact on the field as a whole. As noted in the AAO's previous decision, as of the date of filing, three of the beneficiary's articles had garnered minimal citation.

On motion, the beneficiary asserts that the purpose of citation is "intellectual honesty" that acknowledges "relevance" but only "shows the interest in the field and not necessarily establishes whether your work moves a field ahead." The beneficiary then lists and summarizes his articles, including those published after the date of filing, and concludes "the above publications clearly demonstrate that the importance of the [beneficiary's] continuing contributions to be of national interest and the potential to expand internationally for treating patients born with this debilitating disease."

As noted by the AAO in its previous decision, the articles that postdate the filing of the petition cannot establish the beneficiary's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49; *see also Matter of Izummi,* 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his recently published research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008).

The AAO is not persuaded that publication alone is evidence of the authors' influence in the field. The beneficiary's citation record as of the date of filing is not indicative of an influence on the field as a whole. While the beneficiary's minimal citation record does not preclude eligibility, it is the petitioner's burden to provide some type of evidence establishing the actual impact of the beneficiary's articles once disseminated in the field.

Significantly, the AAO analyzed the citations submitted. Specifically, the AAO acknowledged that the record contained two commentaries that discuss the beneficiary's work. As noted by the AAO, the first commentary appears in the same issue of *Blood* that carried the beneficiary's article and is a synopsis of that work. While the commentary confirms the promising nature of that work, as it was issued contemporaneously with the article itself, it cannot establish that the work ultimately had a degree of influence in the field as a whole. [redacted] the author of the commentary, affirms that commentaries are reserved for the best papers that are accepted for publication. Nevertheless, her commentary notes the risks involved in the solutions proposed in the beneficiary's article that would need to be addressed. The second commentary is merely a review of recent developments. Thus, the AAO reaffirms its conclusion that the commentary and review cannot establish that the beneficiary's work ultimately influenced the field.

The AAO continued:

> Of the remaining citations, one by [redacted] et. al. is extremely favorable, concluding that it is "exciting" that the beneficiary's findings on reducing large solid tumors, in addition to two other studies, provide "the basis for promising clinical trials." The remaining citations do not single out the beneficiary's work from the 100 or more other articles cited. In fact, two of the citations raise concerns about his work on programmed drug resistance. Specifically, [redacted] et. al. discusses several different strategies to programmed drug resistance, one of which is the beneficiary's work. The article then notes that concerns with these strategies include a "lack of effectiveness in selecting hematopoietic stem cells (HSCs) in vivo," "potential development of multiple-drug resistant leukemia," and "the use of highly genotoxic, carcinogenic drugs for selection." Finally, [redacted] et. al. notes the beneficiary's study on the hemoprotective approach using induced resistance to cladribine and 5-FU but points out that the doses needed for the selection induce severe myelosupression and "therefore it seems that this system is not suitable for in vivo selection of hematopoietic stem cells."

The AAO then concluded that the beneficiary's citation history is not, by itself, indicative of a degree of influence on the field as a whole. On motion, the beneficiary asserts that it was his objective to "bring forth the inadequacies of using high amounts of chemotherapy for hematopoietic stem cell collection" and notes that he concluded in his own article that cN-1 "is likely too toxic to consider." Thus, the beneficiary concludes that the criticisms "do not correlate with the beneficiary's work" and, therefore, "the beneficiary's work was in the forefront of research in developing gene therapy based

based strategies." Regardless, the minimal citations as of the date of filing do not support a finding that the beneficiary's work has already produced results that have influenced the field. The beneficiary subsequently characterizes the citations as "Published material in professional publications written by others about the alien's work in the academic field." With the exception of the commentary summarizing the beneficiary's work in the issue in which it appeared, it cannot be credibly asserted that the above articles, primarily about the authors' own work or recent developments in the field, are "about" the beneficiary's work.

The AAO referenced the conference presentations of the beneficiary work, noting that the record does not establish that the beneficiary personally presented the work. On motion, the beneficiary does not challenge the AAO's conclusion that the record lacks evidence of the influence of these presentations. Rather, the beneficiary simply lists the presentations.

The AAO acknowledged that the beneficiary's research is funded but noted that all research must receive funding from somewhere. The AAO concluded that it does not follow that every researcher who is working with a government grant inherently serves the national interest to an extent that justifies a waiver of the alien employment certification requirement. On motion, the beneficiary reiterates that the National Institutes of Health (NIH) funds the beneficiary's research and notes that he is the "lead scientist." The beneficiary does not explain how government funding distinguishes the beneficiary's research from all other research. While funding may demonstrate NIH's determination that the work has potential, it does not establish that the results have already influenced the field or even that they will definitely do so. Regardless of how the petitioner defines the beneficiary's role on this research, there is no evidence that he is the principal investigator listed on the grant.

As acknowledged by the AAO, the record also includes an email from [redacted] at an independent laboratory addressed to [redacted] an [redacted] at the petitioning institution and the beneficiary's coauthor. The email requests the use of [redacted] hemophilia treated mice. The AAO accepted that this request demonstrates one laboratory's interest in these mice, but the AAO noted that the petitioner did not submit a letter from anyone at this laboratory explaining whether the mice were used successfully. As further noted by the AAO, none of the citations provided were articles by [redacted] raising the concern that [redacted] results with [redacted] mice have yet to warrant publication. On motion, the beneficiary states (grammar and emphasis as they appear in the original):

> It was our understanding that he wanted to use our mouse model that we corrected with Gene therapy to see, *if they can enhance generation of porcine fetal tissues given that our mice express significant levels of porcine fVIII.* However, his current publication clearly has moved away from his original hypothesis and is entitled "*Enhancement of pig embryonic implants in factor VIII KO mice: a novel role for the coagulation cascade in organ size control.*" *KO means Knockout or mice without any fVIII.* As the title is self-explanatory, this clearly a point out that research is full of surprises and one has to evolve

has to evolve with the changes.

Regardless, it remains that the record does not establish that [redacted] ultimately applied the petitioner's work in his own research.

The remaining evidence consists of reference letters. The AAO addressed the letters in depth, concluding that they did not explain how the beneficiary's contributions were already influencing the field. On motion, the beneficiary suggests that the AAO failed to consider the broad generalizations in the letters and, apparently, took the references' specific comments out of context. The AAO will review the letters again. The AAO stresses, however, that merely repeating the language of the legal requirements does not satisfy the petitioner's burden of proof.[3] Similarly, USCIS need not accept primarily conclusory assertions.[4]

As stated in the AAO's previous decision, [redacted] describes the beneficiary's experience with the petitioner as follows:

> [The beneficiary] initiates experiments with limited or no supervision, he oversees the work of other technicians within the group, and he directly interacts with graduate and undergraduate studies who are working on their Bachelor's and Doctoral degrees. He is, without question, a vital part of our research group. His essential importance is evidenced by the laboratory skills that he possesses, which includes i) the development of immunological assays directed at measuring the concentrations of specific retrovirally expressed proteins, ii) the development of functional assays directed at measuring the activity of specific blood clotting proteins, iii) the ability to transplant bone marrow cells in small animals that have been preconditioned with a variety of chemotherapy and radiation treatments, iv) the ability to care for animals after receiving bone marrow transplants and v) his molecular biology knowledge that enables our laboratory to quickly clone cDNA sequences encoding genetically-engineered proteins involved in blood coagulation. These skills, and others that were not mentioned, make him a vital part of our group and necessitates the approval off this petition. [The beneficiary's] skill set has taken him years to master. Because he is unique in his ability to understand and implant assay development, it will be impossible to replace his role within our program.

On motion, [redacted] asserts that when he hired the beneficiary he was "the only candidate identified that was qualified for the position." As stated in *NYSDOT,* 22 I&N Dec. at 221, it cannot suffice to state that the alien possesses useful skills, or a "unique background." When discussing claims that the beneficiary in that case possessed specialized design techniques, the AAO asserted:

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[3] *Fedin Bros. Co., Ltd. v. Sava,* 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd,* 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner,* 1997 WL 188942 at *5 (S.D.N.Y.).

[4] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

> [Such experience] would appear to be a valid requirement for the petitioner to set forth on an application for a labor certification. [The] assertion of a labor shortage, therefore, should be tested through the labor certification process. . . . The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor.

Id. at 220-221. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221. [redacted] does not explain why the beneficiary's experience and skills are not amenable to enumeration on an application for alien employment certification.

[redacted] and an assistant professor at the petitioning institution, asserts that the beneficiary "helped develop and characterize a chimeric human/porcine high expression F8 cDNA sequence that expresses up to 100-fold higher levels of the protein product compared to other F8 sequences that are currently in use." [redacted] asserts that his laboratory has used this novel cDNA to cure transgenic mice with hemophilia A by transplanting gene-modified hematopoietic stem cells. The AAO noted that [redacted] does not specify exactly how the beneficiary "helped" in the development of a novel cDNA. Rather, as noted by the AAO, [redacted] concludes that the beneficiary is "one of only a few individuals that fully comprehend the use of recombinant retroviruses used in the transfer of recombinant DNA sequences that generate a recombinant protein that can function to replace the deficient protein in hemophilia A patients." The AAO reiterated that the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

On motion, the beneficiary asserts that the word "helped" was used to denote the collaborative efforts that characterize most scientific research. The beneficiary quotes from [redacted] second letter as follows:

> Previous clinical trails were hindered and unsuccessful due to low levels of protein expression, which have been reviewed extensively in the scientific literature. With [the beneficiary] as the Lead Scientist, we have overcome this inherent problem associated with F8 expression.

The position "lead scientist" is less significant than the actual duties provided by [redacted] does not compare the beneficiary's duties as a "lead scientist" with the principal investigator for the study.

The beneficiary then quotes [redacted] as further evidence of the beneficiary's role. Specifically, [redacted] asserts that the beneficiary "contributed significantly to greater than $5,000,000 of extramural research funding being awarded to the [redacted]

[redacted] As stated above, however, the actual duties listed by [redacted] reflect skills that could be enumerated on an application for alien employment certification.

The AAO also discussed a joint letter from [redacted] and [redacted], which has collaborated with the beneficiary's research team. The AAO stated:

> The joint letter confirms that the beneficiary "uses his expertise in protein expression and purification to successfully produce, purify and characterize large preparations of this hemophilia A product." While the letter affirms that the product is "novel" the innovative nature of the beneficiary's contribution to the product is not readily apparent. Regardless, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

On motion, the petitioner simply quotes more of this letter and discusses [redacted] credentials. Regardless, this letter does not establish the beneficiary's influence beyond his collaborators.

The AAO also addressed letters from the following references:

- [redacted] another professor at the petitioning institution, who merely lists techniques that the beneficiary mastered that can be articulated on application for alien employment certification.
- [redacted], an [redacted] at the [redacted] and a collaborator with the beneficiary's research team, confirms the beneficiary's skills and experience without explaining why they are not amenable to enumeration on an application for alien employment certification.

The AAO acknowledged the submission of additional letters but did not address them individually because they provide similar information to that discussed above. On motion, the beneficiary quotes from some of those letters. For example, the beneficiary quotes from a letter from [redacted] affiliated with [redacted] While the beneficiary correctly quotes [redacted] as discussing the complexity of the strategy the beneficiary's team is pursuing to eventually cure [redacted] beneficiary also quotes [redacted] as stating that the beneficiary's research "was a [redacted]nt in developing gene therapy based treatment strategy for treating cancer." This [redacted]t appear in [redacted] letter. Regardless, nothing in [redacted] letter demonstrates [redacted]nfluence beyond the institution where he works.

[redacted] also discusses letters from [redacted] and [redacted]. [redacted] asserts that the beneficiary is an integral member of a research team conducting novel and groundbreaking work. [redacted] asserts:

> Research done by [the beneficiary] at [the] [redacted] and Blood Disorders Services has led to the identification of certain regions of fVIII that can be manipulated [to] increase protein advancement in the field of Hemophilia A gene therapy since it overcomes the primary hurdle for a successful clinical application.

As an example of the "attention" the beneficiary's work has received, [redacted] references the commentary by [redacted] which appeared in the same issue of *Blood*. This commentary does not demonstrate any subsequent reliance on the beneficiary's work in the field after being disseminated. In his 2009 letter, [redacted] confirms that [redacted] "recently entered into collaboration with [redacted] to develop and advance the High Expression FVIII technology into clinical trails." While notable, this collaboration postdates the filing of the petition and, thus, cannot establish the petitioner's influence beyond the centers where he has worked as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Ultimately, [redacted] does not explain why the beneficiary's "ability to develop assay methods" critical to previous work on animal models is not amenable to enumeration on an application for alien employment certification.

The AAO reiterates that the Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of recognition and vague claims of contributions without specifically providing specific examples of how those contributions have influenced the field. Merely repeating the language of the legal requirements does not satisfy the

petitioner's burden of proof.[5] The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

The basis for requesting a waiver of the alien employment certification is the claimed shortage of available U.S. workers with the beneficiary's laboratory skills and experience and the importance of the project on which the beneficiary is working. The AAO unequivocally rejected claims of unique skills as a basis for a waiver of the alien employment certification process in the national interest. *NYSDOT*, 22 I&N Dec. at 221. The mere fact that the beneficiary may play an important role in the activity to be performed at the petitioning institution is insufficient to established eligibility for a waiver of the alien employment certification because qualified U.S. workers may be available to play a similar role. *Id.* at 223. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.*

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of September 14, 2010 is affirmed. The petition is denied.

[5] *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942 at *5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.